

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MURs 6949 and 6951
DATE COMPLAINTS FILED: July 10, 2015
July 20, 2015
DATE OF NOTIFICATIONS: July 14, 2015
July 23, 2015
DATE OF LAST RESPONSE: August 11, 2015
DATE ACTIVATED: September 22, 2015
ELECTION CYCLE: 2016
EXPIRATION OF SOL: Earliest: March 26, 2020
Latest: October 15, 2020

COMPLAINANTS:

Paul Broadway
Candace Malone

RESPONDENTS:

Russell Ramsland¹
Russell Ramsland for Congress f/k/a Russell
Ramsland Exploratory Committee and Charles
Armstrong in his official capacity as treasurer²

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30102(e)(1)
52 U.S.C. § 30103(a), (b)
52 U.S.C. § 30104
52 U.S.C. § 30116(a)
52 U.S.C. § 30120
11 C.F.R. § 102.1(a)
11 C.F.R. § 102.2(a)(1), (a)(1)(iv)
11 C.F.R. § 104.1
11 C.F.R. § 110.11

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

¹ Ramsland lost the Republican primary election in Texas's 32nd Congressional District on March 1, 2016.

² On October 16, 2015, Ramsland filed a Statement of Candidacy with the Commission that designated Ramsland for Congress as his principal campaign committee; this committee was formerly known as Russell Ramsland Exploratory Committee. See Statement of Candidacy, Russell Ramsland (Oct. 16, 2015). On October 23, 2015, the Committee filed its Statement of Organization with the Commission. See Statement of Organization, Ramsland for Congress (Oct. 23, 2015). Although the Committee filed a Termination Report with the Commission, the Committee was informed that it may not terminate while these matters are pending.

I. INTRODUCTION

The Complaints in these matters allege that Russell Ramsland ("Ramsland") and his committee, Ramsland for Congress f/k/a Russell Ramsland Exploratory Committee and Charles Armstrong in his official capacity as treasurer ("Committee"), solicited and collected contributions for the primary election in the 32nd Congressional District of Texas, but failed to file a timely Statement of Candidacy and Statement of Organization. Both complaints allege that Ramsland failed to include proper disclaimers on his committee's website and e-mails. Finally, the complaint in MUR 6951 alleges that the Ramsland website improperly solicited primary, primary runoff, and general election contributions, thus allowing donors to make excessive contributions. Respondents deny the allegations, and claim that Ramsland had not decided to become a candidate, but was merely testing the waters at the relevant times.

Based on the available information, we recommend that the Commission exercise its prosecutorial discretion and dismiss the allegation that Russell Ramsland violated 52 U.S.C. § 30102(e)(1) by filing an untimely Statement of Candidacy. We further recommend that the Commission dismiss the allegation that Russell Ramsland for Congress f/k/a Russell Ramsland Exploratory Committee and Charles Armstrong in his official capacity as treasurer violated 52 U.S.C. §§ 30103 and 30104 by failing to file a timely Statement of Organization and by not filing an October 2015 Quarterly Report.

In addition, we recommend that the Commission dismiss the allegation that Ramsland or the Committee violated 52 U.S.C. § 30116(a) by soliciting excessive contributions. Finally, although the Committee may not have fully complied with the disclaimer requirements with respect to its website and an e-mail solicitation, we recommend the Commission dismiss these allegations as well.

II. FACTUAL SUMMARY

About six months before Ramsland officially declared candidacy, he launched a website called www.ramslandexploration.com. According to Respondents, the only publicly available information discussing Ramsland's exploratory efforts was on the internet—his exploratory website, two YouTube videos, a Facebook page, an excerpt of his interview on the Glenn Beck radio show, and e-mails, as described below.³

Ramsland held a "Meet and Greet" event on June 8, 2015, and footage shot during this event became the content for the two videos, "Washington is no Longer Listening to Us" and "Obama and Congress are out of Control," both of which were uploaded to YouTube on June 18, 2015, and later uploaded to the Exploratory Committee's website.⁴ On June 23, 2015, Ramsland was interviewed on the Glenn Beck radio show, and an excerpt from that interview was also posted on the Exploratory Committee's website.⁵

Both complaints refer to a June 28, 2015, e-mail sent out with the subject line "Help Russ Get In The Race," which contained links to information similar to that found on the Exploratory Committee's website. The e-mail, a print-out of which is attached to the Complaints, also asks the reader to make a donation and forward the email to others.⁶ It also reads: "Russ believes to

³ Ramsland's Exploratory Committee appears to have had a Facebook page that was no longer available to the general public when the Complaints were filed. We located some of Ramsland's posts on that page dating back to May 15, 2015, that refer to various Republican leaders, but they do not reference Ramsland's exploratory efforts. The first reference on that Facebook page to Ramsland's declaration of candidacy was on October 20, 2015: a banner that read "Ramsland for Congress." See <https://www.facebook.com/pages/Ramsland-Exploration/958463604186313>.

⁴ See <https://www.facebook.com/pages/Ramsland-Exploration/958463604186313> (video links) for videos that are no longer available on YouTube. In both video excerpts, Ramsland expresses his opinions regarding some of the ways in which Congressmen John Boehner and Pete Sessions have allegedly failed to hold President Obama accountable on a number of issues. *Id.*

⁵ *Id.* During the interview, Ramsland stated that he was not a candidate for office but exploring the options of a possible candidacy. He invited listeners to view his website for further information and to make donations. *Id.*; see also <http://www.glennbeck.com/content/show/2015-06-23/> (archived version of the June 23, 2015, radio show).

⁶ See Complaints, Attachs.

1 **send a different message to Washington, we need to send a different messenger. A defeat of**
2 **Pete Sessions would send a powerful message to Republicans nationwide that voters are ready**
3 **to correct the course of this country.”**⁷ The print-out of the email does not identify the sender
4 or recipient.⁸

5 The website's home page contains a donation link. The donation page states that
6 contributions are limited to \$2,700 per individual, per election, including the primary, primary
7 runoff, and general elections.⁹ Further, it instructs potential donors that contributions for each
8 election should be made by separate check to “Ramsland Exploration” for the primary, to
9 “Ramsland Exploration RO” for a primary runoff, and to “Ramsland Exploration G” for the
10 general election.¹⁰ It also states that “contributions for all segments can be made during the
11 exploratory period and will be considered by Super PACs when evaluating the viability of a
12 candidate.”¹¹ Another page on the website entitled “Russell's Core Values” states, among other
13 things, “A defeat of Pete Sessions would be good for a number of reasons...YOU HAVE TO
14 SEND A DIFFERENT MESSENGER TO SEND A DIFFERENT MESSAGE.”¹²

15 Respondents state that Ramsland created an exploratory committee to “test the waters” to
16 determine whether he would become a candidate in the primary, and as such, he was not yet a
17 “candidate” for federal office.¹³ Respondents argue that Ramsland was allowed to spend and

⁷ *Id.* (emphasis in original).

⁸ *Id.*

⁹ See <http://www.ramslandexploration.com> (donation link).

¹⁰ *Id.* The donation page indicates that the Committee could accept up to \$16,200. It appears that the Committee meant that married individuals and their spouses could each donate \$2,700 for the primary, primary runoff, and general elections, that is, a total of \$8,100 per spouse.

¹¹ *Id.* That same page also stated that “if the minimum funding level required for participation in a campaign by Super PACs is not achieved, all unexpended funds in the accounts will be returned pro-rata to donors.”

¹² *Id.* (emphasis in original).

¹³ Joint Resp. at 1-2.

1 receive funds while testing the waters, so long as he did not engage in any activities that would
2 make those funds "contributions" or "expenditures, and he did not do so."¹⁴ According to the
3 Respondents, Ramsland did not authorize anyone to send e-mails on his behalf referring to or
4 identifying him as a candidate, and his website stated that Ramsland was not a candidate, nor had
5 he decided to become one.¹⁵ Finally, Respondents assert that the funds raised (approximately
6 \$225,000) did not exceed what could reasonably be expected for an exploratory effort, and
7 Ramsland has only accepted donations from individuals that complied with the \$2,700 per
8 individual, per election, limit.¹⁶ The Committee's first report, the 2015 Year-End Report,
9 indicates that between April 23, 2015, and August 10, 2015, Ramsland received eleven
10 contributions totaling \$24,900 that contributors designated for a possible primary runoff.

11 III. LEGAL ANALYSIS

12 A. Law

13 An individual is deemed to be a "candidate" for purposes of the Act if he or she receives
14 contributions or makes expenditures in excess of \$5,000.¹⁷ Once an individual passes the \$5,000
15 threshold, he or she has fifteen days to designate a principal campaign committee by filing a
16 Statement of Candidacy.¹⁸ The principal campaign committee must then file a Statement of
17 Organization within 10 days of its designation,¹⁹ and must file disclosure reports with the
18 Commission in accordance with 52 U.S.C. § 30104(a) and (b).

¹⁴ *Id.* at 1-2.

¹⁵ *Id.* at 2.

¹⁶ *Id.*, Attach. Russell Ramsland Aff. at 1. (Aug. 11, 2015).

¹⁷ 52 U.S.C. § 30101(2)

¹⁸ *Id.* § 30102(e)(1); 11 C.F.R. § 101.1(a).

¹⁹ 52 U.S.C. § 30103(a).

1 The Commission has established limited exceptions from these thresholds, which permit
2 an individual to test the feasibility of a campaign for federal office without becoming a candidate
3 under the Act. Commonly referred to as the "testing the waters" exceptions, 11 C.F.R. §§ 100.72
4 and 100.131 exclude from the definitions of "contribution" and "expenditure," respectively,
5 those funds received, and payments made, to determine whether an individual should become a
6 candidate.²⁰ "Testing the waters" activities include, but are not limited to, payments for polling,
7 telephone calls, and travel.²¹ An individual who is "testing the waters" need not register or file
8 disclosure reports with the Commission unless and until the individual subsequently decides to
9 run for federal office *or* conducts activities that indicate he or she has decided to become a
10 candidate.²² All funds raised and spent for "testing the waters" activities are, however, subject to
11 the Act's limitations and prohibitions.²³

12 Once an individual begins to campaign or decides to become a candidate, funds that were
13 raised or spent to "test the waters" apply to the \$5,000 threshold for qualifying as a candidate,
14 and the candidate must register with the Commission.²⁴ Once an individual reaches candidate
15 status, all reportable amounts from the beginning of the testing-the-waters period must be

²⁰ The Commission has emphasized the narrow scope of these exemptions to the Act's disclosure requirements. *See* Explanation and Justification for Regulations on Payments Received for Testing the Waters Activities, 50 Fed. Reg. 9992, 9993 (Mar. 13, 1985) ("The Commission has, therefore, amended the rules to ensure that the 'testing the waters' exemptions will not be extended beyond their original purpose. Specifically, these provisions are intended to be limited exemptions from the reporting requirements of the Act . . ."). *See* 52 U.S.C. §§ 30101(8), (9).

²¹ 11 C.F.R. §§ 100.72(a), 100.131(a).

²² *See id.*; *see also* Advisory Op. 1979-26 (Grassley).

²³ 11 C.F.R. §§ 100.72(a), 100.131(a).

²⁴ *Id.*; *see* Factual and Legal Analysis at 3, MUR 6533 (Perry Haney); Factual and Legal Analysis at 5, MUR 6449 (Jon Bruning).

1 disclosed on the first financial disclosure report filed by the candidate's committee, even if the
2 funds were received or expended prior to the current reporting period.²⁵

3 Commission regulations set out five non-exhaustive factors to be considered in
4 determining whether an individual has decided to become a candidate. Among other things, an
5 individual indicates that he or she has gone beyond "testing the waters" and has decided to
6 become a candidate by raising funds in excess of what could reasonably be expected to be used
7 for exploratory activities or undertaking activities designed to amass campaign funds that would
8 be spent after he or she becomes a candidate.²⁶ These regulations seek to draw a distinction
9 between activities directed toward evaluating the feasibility of one's candidacy, and conduct
10 signifying that one has reached a private decision to become a candidate.²⁷

11 Treasurers of congressional campaign committees are required to file quarterly reports no
12 later than the 15th day following the close of the immediately preceding calendar quarter, except
13 for the Year-End Report, which is due by January 31st.²⁸ The Act further provides that (1) no
14 person may make contributions to any candidate and his authorized political committee with
15 respect to any election for federal office which, in the aggregate, exceed \$2,700 (2016 cycle
16 limit); (2) the individual contribution limit applies on a per-candidate, per-election basis; and
17 (3) no candidate or committee may knowingly accept contributions in violation of this limit.²⁹

²⁵ 11 C.F.R. §§ 101.3, 104.3(a) – (b).

²⁶ *Id.* §§ 100.72(b), 100.131(b). The other factors listed in the regulations are (1) using general public political advertising to publicize his or her intention to campaign for federal office, (2) making or authorizing written or oral statements that refer to him or her as a candidate for a particular office, (3) conducting activities in close proximity to the election or over a protracted period of time, or (4) taking action to qualify for the ballot under state law. *Id.*

²⁷ *See* Advisory Op. 1981-32 (Askew).

²⁸ 11 C.F.R. § 104.5(a).

²⁹ 52 U.S.C. §§ 30116(a)(1)(A), (f). "Election" is defined to include, among other things, a general, special, primary, or runoff election. *Id.* § 30101(1)(A) and (25).

1 In relevant part, the Commission's regulations state that the disclaimer requirements
2 apply to political committees that make or send public communications, websites of political
3 committees made available to the general public, and any person making public communications
4 containing express advocacy or soliciting contributions.³⁰ Also, emails of more than 500
5 substantially similar communications sent by a political committee must contain a disclaimer.³¹
6 A "public communication" is defined as "a communication by means of any broadcast, cable or
7 satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or
8 telephone bank to the general public, or any other form of general public political advertising."³²
9 However, the term "general public political advertising" does not include communications over
10 the internet, except for communications placed for a fee on another person's website.³³
11 Disclaimers for printed communications must be conspicuous and clearly state that they are paid
12 for or authorized by a candidate or candidate's committee, be of sufficient type size to be
13 readable, and be in a printed box set apart from the rest of the communication.³⁴

14 **B. Analysis**

15 Considered as a whole, the facts seem to support the conclusion that Ramsland was
16 testing the waters for a potential candidacy before his candidacy announcement, although there

³⁰ 52 U.S.C. § 30120.

³¹ 11 C.F.R. § 110.11(a)(1).

³² 11 C.F.R. § 100.26.

³³ *Id.* The Explanation and Justification ("E&J") for Internet Communications at 71 Fed. Reg. 18,589 (Apr. 12, 2006) notes that "The Commission does not consider e-mails to be a form of 'general public political advertising' because there is virtually no cost associated with sending email communications, even thousands of e-mails to thousands of recipients, and there is nothing in the record that suggests a payment is normally required to do so." *Id.* at 18,596. In addition, the E&J provides that the Congress does not view e-mails in the same manner as mass mailings as indicated by its revision of its own franking rules to remove mass e-mail communications from the list of "unsolicited mass communications" requiring pre-authorization from the Franking Commission. *Id.* at 18,596-97; see also "Meeting to Approve New Electronic Communications Policy" at <http://www.access.gpo.gov/congress/house/houseo8bm108.html>.

³⁴ 11 C.F.R. § 110.11(b)(1), (c)(1) - (2).

1 are some contrary facts. The home page of his website, named "ramslandexploration.com,"
2 states "[p]lease note that this is an EXPLORATORY effort at this time, and Russell is not a
3 candidate for any public office, nor has he decided to become a candidate."³⁵ Ramsland's other
4 written materials used the word "exploratory" repeatedly, and while use of the word
5 "exploratory" in materials is not dispositive,³⁶ most of Ramsland's written and oral statements
6 indicate that he had not yet decided whether to become a candidate. But there are exceptions:
7 some of Ramsland's written materials both solicit funds and argue why a purported outsider like
8 Ramsland would be preferable to the incumbent, Pete Sessions.³⁷ The Commission has found
9 marginally more direct statements calling for the defeat of an incumbent while soliciting funds
10 for a potential challenger's campaign to be evidence that an individual was no longer testing the
11 waters.³⁸

12 Additionally, Ramsland's solicitation and acceptance of donations designated specifically
13 for a possible primary runoff or general election raise the question of whether he was "amassing

³⁵ Compl. at 2 (emphasis in original).

³⁶ See F&LA at 9, MUR 6449 (Bruning) (finding that even though it was sent under the exploratory committee letterhead, the text of a solicitation itself was an indication that candidate had decided to run); Second Gen. Counsel's Report at 4-6, MUR 5693 (Aronsohn) (rejecting argument that the communications at issue were covered under the testing the waters exemption merely because of their repeated use of the word "exploratory," and finding probable cause based on other language and conduct indicating the decision to become a candidate had been made); F&LA at 7-8, MUR 5363 (Sharpton) (concluding individual became a candidate 6 months before he filed his Statement of Candidacy based on clear statements made in his book that he was running for President and finding that the formation of an "exploratory" committee did not negate those statements or "eradicate the registration and reporting requirements that [had] been triggered").

³⁷ Compl., Exhs. (print-outs of e-mail and website) ("A defeat of Pete Sessions would send a powerful message to Republicans nationwide"... "A defeat of Pete Sessions would be good for a number of reasons... YOU HAVE TO SEND A DIFFERENT MESSENGER TO SEND A DIFFERENT MESSAGE.")

³⁸ See MUR 6449 (Bruning) (Commission concluded that Bruning, by soliciting funds to be used to campaign against a specifically named opponent, made or authorized a statement that refers to himself as a candidate for a particular office when he made the following statement: "Please help me defeat Ben Nelson in 2012. Together we can take back this country and bring true Nebraska values to Washington," and thus had decided to campaign for office); MUR 5693 (Aronsohn) (Commission found probable cause to believe that individual became a candidate when he sent a solicitation letter that included statements such as "But I have the energy, the experience, and the determination to win this race. And as evidenced by the attached news article, I am ready to begin fighting for our future . . . now"; "Every dollar we receive in the next few weeks can help us prepare for this fight against [incumbent] Scott Garrett"; and "We have come a long way in just a few short weeks. And with your support, we can go the distance.").

1 funds" to be used after he became a candidate. The Committee's reports show that between
2 April 23, 2015, and August 10, 2015, Ramsland received eleven contributions totaling \$24,900
3 designated for the primary runoff.³⁹ Ramsland's materials are vague as to the solicitation's
4 purpose; they state that the contributions received for all elections would be assessed by Super
5 PACs.⁴⁰

6 Given the unique facts of the case, we recommend the Commission exercise its
7 prosecutorial discretion and dismiss the allegations.⁴¹ The amount Ramsland received, \$24,900,
8 is both modest and a small percentage of his total receipts, and most of Ramsland's written
9 materials say explicitly that Ramsland was merely contemplating a run.⁴²

10 In addition, the available information does not support the allegation that Ramsland
11 solicited or received donations in excess of \$2,700 per election as was suggested by the July 23,
12 2015, Complaint. Instead, the information suggests that the Committee, in informing donors that
13 they could contribute up to \$16,200, meant to convey that married individuals and their spouses
14 could each donate \$2,700 for the primary, primary runoff, and general elections, that is, a total of
15 \$8,100 per spouse. Therefore, we recommend that the Commission dismiss this allegation.

³⁹ See 2015 Year-End Report (Jan. 31, 2016). Ramsland also solicited and accepted funds, totaling \$13,500, designated for the general election, between April 23, 2015, and August 20, 2015.

⁴⁰ See <http://www.ramslandexploration.com> (donation link) ("Contributions for all segments...will be considered by Super PACs when evaluating the viability of a candidate). The Commission has never opined whether this purpose is a legitimate exempt activity.

⁴¹ In a somewhat similar case, the Commission stated that merely receiving funds designated for the general election during the testing the waters phase did not *per se* render an individual a candidate. MUR 5703 (Rainville), First Gen. Counsel's Report at 6 (June 19, 2006). In that case, the Commission concluded that the amount received (\$4,000) and the number of checks designated for the general election (two) compared to the \$100,000 raised did not demonstrate the individual's intent to be a candidate, especially since there was no information in the record that she or her committee specifically solicited the general election contributions. Ramsland, who both received and solicited contributions, accepted eleven such contributions totaling \$24,900 that were designated for a possible primary runoff election, out of a total amount raised of \$222,641. While the number, total amount, and the percentage of overall contributions received are somewhat higher in Ramsland's case, they are not significantly so.

⁴² *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

1 We also recommend that the Commission dismiss the disclaimer allegations. As to the
2 website, the available information suggests that Ramsland did not pay to have any of his internet
3 communications placed on another person's website. Therefore, assuming that Ramsland had
4 not yet become a candidate (and, therefore, his exploratory committee had not yet met the
5 definition of a "political committee"), the exploratory committee's website was excluded from
6 the definition of a "public communication" and did not require a disclaimer.⁴³ However, if
7 Ramsland triggered candidacy earlier than the date he filed his statement of candidacy, the
8 website needed an appropriate disclaimer.⁴⁴ The website did not contain a "paid for" disclaimer,
9 but it did identify the entity responsible for it: the "Russell Ramsland Exploratory Committee."⁴⁵
10 In addition, the URL for the website clearly identifies the responsible entity.⁴⁶ Given these
11 considerations, we recommend that the Commission dismiss the website disclaimer allegation.⁴⁷
12 For much the same reasons, we also recommend the Commission dismiss the allegation that the
13 exploratory committee's e-mails failed to include a disclaimer.

14 Accordingly, we recommend that the Commission dismiss the allegations that Russell
15 Ramsland violated 52 U.S.C. § 30102(e) and 11 C.F.R. § 101.1(a), and dismiss the allegations
16 that Ramsland for Congress f/k/a Russell Ramsland Exploratory Committee and Charles
17 Armstrong in his official capacity as treasurer violated 52 U.S.C. §§ 30103(a), 30104 and
18 11 C.F.R. §§ 102.1(a), 102.2(a)(1), (a)(1)(iv) by filing untimely candidate and committee

⁴³ See 11 C.F.R. § 100.26; see also Internet Communications, 71 Fed. Reg. 18,589, 18,600-01 (Apr. 12, 2006) ("Explanation and Justification").

⁴⁴ See 11 C.F.R. §§ 100.26, 110.11(a)(1).

⁴⁵ See Complaints, Attach.

⁴⁶ See www.ramslandexploration.com.

⁴⁷ See, e.g., MUR 6784 (Kwasman) (committee's partial disclaimer on an exploratory committee website merited dismissal since it was unlikely that the public was misled); MUR 6770 (Hale for Congress); MUR 6963 (Bullwinkel).

registrations and failing to file an 2015 October Quarterly Report. We further recommend that the Commission dismiss the allegation that Ramsland and the Committee violated 52 U.S.C. § 30116(a) by accepting funds in excess of the Act's limitations; and dismiss the allegation that the Exploratory Committee's website and solicitations did not contain appropriate disclaimers.

IV. RECOMMENDATIONS

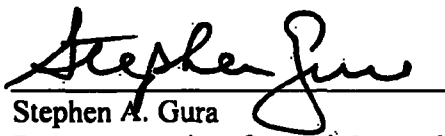
1. Dismiss the allegation that Russell Ramsland violated 52 U.S.C. § 30102(e)(1) and 11 C.F.R. § 101.1(a) by filing an untimely Statement of Candidacy.
2. Dismiss the allegation that Ramsland for Congress f/k/a Russell Ramsland Exploratory Committee and Charles Armstrong in his official capacity violated 52 U.S.C. §§ 30103(a), 30104 and 11 C.F.R. §§ 102.1(a), 102.2(a)(1), (a)(1)(iv) by filing an untimely Statement of Organization and failing to file an October 2015 Quarterly Report.
3. Dismiss the allegation that Russell Ramsland and Russell Ramsland Exploratory Committee violated 52 U.S.C. § 30116(a).
4. Dismiss the allegations that Ramsland for Congress f/k/a Russell Ramsland Exploratory Committee and Charles Anderson in his official capacity as treasurer violated 52 U.S.C. § 30120 and 11 C.F.R. § 110.11 in connection with its website and email solicitations.
5. Approve the attached Factual and Legal Analysis.
6. Approve the appropriate letters.
7. Close the file.

Lisa J. Stevenson
Acting General Counsel

Kathleen M. Guith
Associate General Counsel for Enforcement

3.21.17

Date


Stephen A. Gura
Deputy Associate General Counsel
for Enforcement

Kimberly D. Hart
Attorney